

Benjamin Woodhouse
Havensight Capital LLC
#5 Company St.
Christiansted, USVI 00820
805 478 1958
California Bar #261361

UNITED STATES FEDERAL COURT
CENTRAL DISTRICT OF CALIFORNIA

Havensight Capital LLC, A) Case No.: 2:15-cv-05297
USVI Limited Liability) **Complaint**
Corporation)
Plaintiff,)

Google, Inc., A Delaware
Corporation,
Does 1 to 10
Defendant

COMPLAINT

Jurisdiction

The Federal Court of the Central District of
California has jurisdiction, under *28 U.S.C. Section*
1332, because there is diversity of citizenship, and an
amount in controversy, which is greater than \$75,000.
Google, Inc., here, is incorporated in Delaware, and

1 Havensight Capital L.L.C. is incorporated, here, in the
2 U.S. Virgin Islands.
3
4

5 Havensight Capital L.L.C. has, neither, other
6 owned, nor affiliated L.L.C. members. Havensight
7 Capital's incorporator is Mr. Donovan Hamm, and its
8 manager, is Mr. Benjamin Woodhouse. Havensight
9 Capital's LLC incorporation certificate is attached to
10 this filing, and signed by the Lt. Governor of the U.S.
11 Territory. *See Exhibit 1.* Havensight Capital L.L.C.
12 has a corporate agent of process, at 5030 Anchor Way,
13 Christiansted, VI. 00820, and a corporate office at #5
14 Company St., Christiansted, VI. 00820.
15
16
17
18
19

20 Venue

21
22

23 Venue is proper pursuant to, *28 U.S.C Section 1391*,
24 here, because Google Inc. has substantial contacts,
25 with the Central District of California, as it serves
26 millions of customers, who reside in the District, and
27
28

1 a substantial portion of the alleged torts, here, also,
2 occurred in this District.

3
4
5 **Parties**
6

7
8 1. Plaintiff is a Limited Liability Company, and has a
9 physical office address, at #5 Company Street,
10 Christiansted, USVI 00820. The Company has an agent of
11 process, at 5030 Anchor Way, Christiansted, VI. 00820.
12
13

14
15 2. Google Inc., is a Delaware Corporation, but is
16 headquartered, at 1600 Amphitheater Way, Mountain View,
17 CA. 94043. The Company has an agent of process, at
18 C.S.C., 2710 Gateway Oaks Dr. Ste. 150N, Sacramento, CA
19 95833.
20
21

22
23 **Statement of Facts**
24

25
26 Havensight Capital LLC ("Plaintiff") recently
27 launched, and owns and operates, a number of consumer
28

1 products companies, including: a soccer brand, golf
2 brand, men's razor company, website design firm, and a
3 financial convenience company. The Plaintiff relies
4 primarily, on online advertising to market its
5 products, and services. The Plaintiff's existence is
6 dependent, on maintaining websites, and placing online
7 advertisements.
8
9

10
11
12 Further, such maintenance and advertising is
13 necessary to: drive sales, record customer acquisition
14 data, track e-commerce and website trends, make pricing
15 decisions, and connect with its customer base.
16 Moreover, all of these business acts are critical
17 components, and metrics that are used, in accessing
18 private capital markets. All of these components and
19 metrics are used by Venture capitalists, in their
20 evaluation processes.
21
22
23
24
25

26 First, the Plaintiff, here, uses the Defendant's,
27 Google Analytics, to track data, and make the
28

1 aforementioned business decisions. The Plaintiff,
2 here, has used Google Ad words, to market some of its
3 owned sites, and products. The Plaintiff, here, on a
4 number of separate occasions attempted, to market one
5 of its business sites, using Google Ad words, and the
6 Plaintiff's ad was consistently rejected by the
7 Defendant, and the Plaintiff was denied any access, to
8 this Google Ad Words product, without any explanation,
9 other than Google's unhelpful standard boiler plate
10 language for such unwarranted, and selective denials
11 over similarly situated classes of customers. See
12 *Exhibit 2, Google's Most Recent Denial of Ad in*
13 *Writing.* The Plaintiff has been denied, on multiple
14 occasions, access to the product, for this same
15 business line, and its respective site.

16
17
18
19
20
21
22
23 Second, the Plaintiff, here, was then forced to use
24 Facebook's marketing for its sites, and made various
25 purchases, on Facebook's Ads Manager. Facebook Inc.
26 customers, here, are able to check the success, and
27
28

1 effectiveness of such ads, using a reporting tool that
2 records the number of visits, to a specified website,
3 as a direct result of a purchase of Facebook's online
4 advertising product. This specific success reporting
5 tool of the Defendant's, is entitled, "Ads Manager
6 Reporting," on Facebook.
7
8

9
10 The Plaintiff, here, purchased ads on Facebook,
11 with the sole purpose of gaining website visits, to its
12 business websites for business purposes, including the
13 one for the website, which Google Ad Words denied
14 access to, on the following dates: Nov. 11, 2013 Jan.
15 28, 2014, July 11, 2014, March 13, 2015, March 23,
16 2015, and May 14, 2015.
17
18
19

20
21 The Plaintiff, here, was shocked and outraged, to
22 find that the Google Analytics data did not reconcile
23 at all, with that of the data exhibited, on the
24 Facebook Ads manager reporting tool for the duration of
25 any of the placed Facebook marketing campaigns. **In**
26
27
28

1 fact, the differences in reported Website visits data
2 were materially substantial, and significant.
3
4

5 For the most recent campaign, the Facebook Ads
6 manager allegedly reported website visits, to the
7 specified site at likely, over 35% more than those
8 reported, on the Google analytics, based on a campaign,
9 in the high hundreds of dollars, with hundreds of
10 visits purchased, as the sample size. On May 26, 2015,
11 Facebook reporting bringing through its Ad, 819 clicks
12 to the site, whereas, Google analytics for the same
13 exact period up to the minute, only reported 645
14 sessions, a gross under representation. See *Exhibit 3,*
15 *and Exhibit 4.*
16
17
18
19

20
21 Moreover, the Google Analytics tool, here, records
22 not only the site visits, as a result of Facebook
23 marketing, but also all site visits generated from the
24 Web. Google analytics also records visits from spam
25 bots, and visitors that spend less than one second on
26
27
28

1 sites. Thus, Google's alleged fraudulent, and grossly
2 under inflated reporting, on Google Analytics, which is
3 substantially variant from that which is, recorded on
4 Facebook Ads manager. Further, Facebook Ads manager
5 only records visits from Facebook generated marketing,
6 thus such under inflation could be much higher than
7 this stated numerical website clicks, under inflation.
8 The Plaintiff would estimate, here, that this alleged
9 under inflation is **probably closer to 35% to 40%** based,
10 on a logical deduction that the sites generate an
11 amount of traffic, independent of the Facebook
12 advertising campaigns. For instance, the Plaintiff's
13 staff, here, visits the respective sites twice a day,
14 just to check that the sites are functioning properly.
15
16
17
18
19
20
21

22 Additionally, this alleged under inflation practice
23 was observed for each and every campaign that was
24 placed by the Plaintiff, and roughly, at this same 35%
25 under inflation level. This seems to allegedly be a
26
27
28

1 very consistent pattern of fraudulent, and defective
2 under reporting of data.
3
4

5 For instance, additionally, Google Analytics and
6 Facebook screenshots were taken, at around 12:15 a.m.,
7 right after midnight, on May 18th 2015, at the
8 identical time, the Facebook Ads Manager displays a
9 count of 378 clicks, at a random pricing of \$.67 a
10 click, which was not ordered by the client, but is
11 generated by Facebook, in contrast the Google
12 Analytics, which measures all traffic, including non-
13 Facebook ad traffic reported, 320 users. *See Exhibit 5*
14 *and Exhibit 6.*
15
16
17
18
19

20 Further, although this is just two sample periods
21 frozen in time, the Plaintiff observed a similar amount
22 of under inflation for all campaigns, across various
23 time periods. Further, the Google analytics chart also
24 reflects clicks from the start of May 14th, whereas our
25 Facebook campaign, here, was not started, until the
26
27
28

1 evening of May 14th, thus there is certainly an alleged
2 gross misrepresentation, and under inflation, close to
3 the 35%, to 40% range.
4

5
6 The Plaintiff has relied, here, on this alleged
7 fraudulent data to: make business decisions, determine
8 the feasibility of the market for its diverse set of
9 offered products, determine the success of marketing
10 and product initiatives, calculate conversion rates,
11 and garner Venture capital investment for each, and all
12 of Havensight Capital's owned companies. Moreover, the
13
14
15
16 Plaintiff contends that a taking of these businesses
17 have occurred, here, for the following reasons.
18
19

20 The Plaintiff, here, relied on this fraudulent data
21 in business operations, was unfairly denied access, to
22 Google Ad Words product, making it less competitive
23 than other industry players, and was ultimately
24 potentially denied requested Venture capital funding
25 from a myriad of firms. Such denial was allegedly a
26
27
28

1 direct result of Google's faulty exhibited reporting
2 data, inaccurate conversion rates, inaccurate website
3 visits success rates, and arbitrary denial of access to
4 online marketing products across similarly situated
5 customers.
6

7
8
9 Furthermore, the Plaintiff also believes that the
10 Defendant may have been enticed, to engage in such
11 alleged fraud, as it allegedly possesses a complete and
12 illegal monopoly, across a multiple of categories,
13 including, but not limited to: online marketing in word
14 form, website reporting tools, and search technology.
15 There are no other social networking service providers,
16 which offer such word based Website click marketing
17 models, with a substantial network size, as Google
18 possess. The Plaintiff believes that the Defendant's
19 alleged illegal industry monopoly position is a driving
20 force, behind this Defendant's fraudulent behavior.
21
22
23
24
25
26
27
28

1 Lastly, the Plaintiff also alleges that the
2 Defendant practices **product tying**, and **vertical price**
3 **fixing**, here. First, Google is selective, here, on who
4 can access its products, denying one class of customers
5 access to a product, but allowing similarly situated
6 customers access to that same product. Second, it
7 requires customers, to agree to consume a majority of
8 its products at once, in order to access, either, just
9 one, or two of its products, such as its alleged errant
10 Google Analytics reporting tool, or Ad Words product,
11 which, both, individually require the same Google
12 profile account creation.
13
14
15
16
17
18

19 Third, the Defendant also utilizes a bid for clicks
20 model, here, which forces the customer to bid across
21 various online platforms for online marketing service,
22 which is the very definition of alleged product tying -
23 the forced purchase of products on different platforms,
24 within a single purchase structure. Fourth, the
25 **Plaintiff is not allowed to use an online campaign, to**
26
27
28

1 market multiple products, or services, at the same
2 time, here through its Ad Words manager tool. For
3 instance, a customer wishing to market soccer balls,
4 and golf balls concurrently must purchase independent
5 Google Ad word campaigns, here, and is unfairly
6 restricted from marketing multiple products through the
7 purchase of a single online ad.
8
9

10
11
12 Finally, the Plaintiff also, here, was probably
13 allegedly improperly constrained from gaining access,
14 to private capital markets, and potentially public
15 capital markets, in order to obtain capital for its
16 business operations, as a result of the Defendant's
17 alleged monopolistic operation, and inflated vertical
18 predatory product pricing for its online marketing
19 services. Venture leaders rely on, these customer
20 acquisition costs, generated online sales, and websites
21 visits data, to determine whether or not to allow, a
22 startup company, access to capital. Thus, a taking of
23 the Plaintiff's company has allegedly occurred, here,
24
25
26
27
28

1 as a result of the totality of this alleged tortious
2 conduct.

3 4 5 Claims

6 7 8 **I. Intentional Interference with Prospective** 9 **Economic Relations**

10
11
12 The Court should probably find that the tort of
13 Intentional interference with prospective economic
14 advantage has been violated. In *Youst v. Longo* (1987)
15 43 Cal.3d 64, 71, the Court held that the "five
16 elements for the tort of intentional interference with
17 prospective economic advantage, are: (1) [a]n economic
18 relationship between the plaintiff and some third
19 party, with the probability of future economic benefit
20 to the plaintiff; (2) the defendant's knowledge of the
21 relationship; intentional acts on the part of the
22 defendant designed to disrupt the relationship; (4)
23 actual disruption of the relationship; and (5) economic
24
25
26
27
28

1 harm to the plaintiff proximately caused by the acts of
2 the defendant." Also See *Ab Group v. Wertin*, 59 CA 4th
3 1022, 1034.
4

5
6 Whether or not such a relationship exists, is a
7 question of fact for the Court to determine, and a
8 Defendant can be liable for only having negligent
9 knowledge of any such economic relationship. *Buckaloo*
10 *v. Johnson*, (1975) 14C3d, 815, 830. Further, the
11 Defendant, here, cannot contract away liability for
12 illegal acts, such as fraud, and if any term is
13 unconscionable then the entire contract must be
14 stricken. See *Kauffman v. Stewart Inc. v. Weinbrenner*
15 *Show Co.* 589 N.W. 2d 499, 502 (1999).
16
17
18
19

20
21 More importantly, the Defendant, here, cannot even
22 try to argue that it did not have notice of the
23 Plaintiff's contractual relations, with prospective
24 customers, here. This is because the Google Ad words
25 product, here, was created for connecting with
26
27
28

1 prospective customers, and Google analytics actually
2 tracked those physical clicks on Google's servers,
3 which satisfied the element of actual notice. *Quelimane*
4 *Co. v. Stewart Title Guaranty Co.*, (1998) 19 Cal.4th
5 26, 55. See Also *Pacific Gas & Electric Co. v. Bear*
6 *Stearns*, 50 Cal.3d 1118 (1990).
7
8
9

10 The Defendant, here, either, knew, or had
11 constructive notice of the fact that the Plaintiff has
12 contractual relations, with, both, existing customers,
13 and potential customers. *Id.* The Defendant, here,
14 offers, and selectively denied the Plaintiff, online
15 business marketing services, thus it is reasonable for
16 the Court to infer, here, that the Defendant would
17 expect this business online marketing tool, to be used
18 for contractual relations.
19
20
21
22
23

24 Further, also specifically, here, business owners
25 use Google analytics products, in order to track
26 contractual relations with customers, through the
27
28

1 analyzing of customer data. References to such
2 business relationships can even be found, in Google's
3 marketing material, on its Google Ad Words site. See
4 *Google Ad Words website*. The Plaintiff, here, used the
5 Google online marketing and metrics products, to create
6 contractual relations with purchasers of soccer, golf,
7 men's care, website design, and financial convenience
8 products, and services.
9
10
11

12
13 Moreover, there was actual damage caused by the
14 Defendant's conduct, here, to contractual relations,
15 and economic advantage, as the Plaintiff, here, alleges
16 that the Defendant fraudulently conveyed the number of
17 potential customers that were reached, as a result of
18 marketing, and company initiatives on its Google
19 Analytics site. Also, the Plaintiff, here, was
20 actually damaged by Google's selective denial of its
21 Google Ads word product, to the Plaintiff, which
22 restricted the Plaintiff's ability to conduct commerce,
23 over the Internet. See *Exhibit 2*.
24
25
26
27
28

1
2 Specifically, the Defendant, here, allegedly under
3 inflated the number of website visits reported, in
4 likely excess of 35%, which is neither, insignificant
5 nor immaterial. Thus, the Plaintiff, here, lost
6 potential sales, and its economic advantage was damaged
7 by the Plaintiff making incorrect business decisions,
8 here, based on the alleged fraudulent customer
9 acquisition cost data, exhibited by Ads Manager data,
10 and also denied Venture Capital funding. Moreover, the
11 Defendant, here, purposefully and intentionally denied
12 the Plaintiff, in writing, fair access to the
13 Defendant's Google Ad words product. *Id.*
14
15
16
17
18
19

20 Lastly, the Court held, in *Nautical Solutions Mktg.*
21 *v. Boats.com*, 2003 WL 26078691, that an online company,
22 which interferes negligently, and with a company's
23 prospective contractual relations can be held liable
24 for such interference. In *Nautical Solutions Mktg. v.*,
25 a party committed tortious conduct by using copyright
26
27
28

1 property, to improperly redirect customer traffic from
2 one business website, to another.
3
4

5 This case is directly analogous, as the Defendant,
6 here, allegedly misrepresented the Plaintiff's website
7 data, on its Google Analytics product, and also
8 unfairly denied the Plaintiff access, to its Google Ad
9 words product. Such levels of alleged digital
10 interference, and intentional restriction of commerce
11 ad directly analogous, here, in both cases. *Id.* Thus,
12 the Defendant should be liable for the tort of
13 Intentional Interference with Prospective Economic
14 Advantage.
15
16
17
18
19
20

21 **II. Unfair Competition and Trade Practices**

22
23

24 The Court should probably find that the Defendant
25 has committed the tort of Unfair Competition and Trade
26 practices. *Under California's Unfair Competition Law*
27
28

1 (UCL), Cal. Bus. of Prof. Code § 17200, et seq., the
2 UCL defines unfair competition as, among other things,
3 "including any unlawful, unfair or fraudulent business
4 act or practice and unfair, deceptive, untrue or
5 misleading advertising." The Defendant, here, also
6 allegedly engages in monopolistic behavior, and has
7 violated anti-trust statutes, in its fraudulent
8 conveyance of marketing services.
9
10
11

12
13 **A. Google is an Alleged Runaway Monopoly.**
14
15

16 Specifically, it is the sole player, here, in the
17 online marketing industry for word denominated
18 marketing, and for Internet website tracking, with any
19 significant network scale. The Defendant, here,
20 leverages this anti-competitive position, to unduly
21 charge its customers, clandestinely price its online
22 marketing products, selectively deny customers access
23 to products, and inappropriately misrepresents actual
24 services provided. This is a direct violation of
25
26
27
28

1 *Section 15 U.S.C. Title 2*, commonly known as the
2 *Sherman Act*.

3
4
5 Lastly, the Plaintiff, here, has well defined the
6 industries, and sufficiently under the law. *Id.* The
7 Defendant operates in, as an alleged monopoly, no
8 Court, here, would likely confuse the online ad
9 marketing industry, and online website tracking
10 industry for, either, the banking industry, or another
11 well-known business industry, and be unable to require
12 discovery, on such egregious alleged tortious conduct
13 for lack of an alleged industry definition. A
14 discovery process will allow the Defendant, here, a due
15 process, to refute these allegations of the Defendant
16 operating a runaway monopoly, and demonstrate a
17 functioning robustly diverse, and competitive
18 marketplace.
19
20
21
22
23
24
25

26 Further, the definition of monopolistic behavior is
27 the power to "exclude competition." See *United States*
28

1 *v. E.I. DuPont de Nemours & Co.*, 351 U.S. 377, 391
2 (1956). The Defendant, here, is able to unfairly
3 exclude competition through its predatory pricing for
4 online marketing services, selective denial of services
5 to similar situated customers, and fraudulent
6 misrepresentations, about the success of these
7 services. *Id.*
8
9

10
11
12 Specifically, the Defendant, here, grossly under
13 inflated the success of its online marketing products
14 by allegedly 35% or more, and provides no equitable
15 transparency, on pay for click pricing for its Google
16 Ad words product. Rather, Google customers, here,
17 enter a furtive and magical closed off marketplace
18 controlled by Google, which spits out random prices for
19 website clicks. Even more harrowing, is the fact that,
20 here, the Defendant, here, actually even denied the
21 Plaintiff access, to its Ad words product, **which is the**
22 **single product of its kind, in the industry.** This is
23 despite the fact that, here, the Plaintiff is a
24
25
26
27
28

1 similarly situated class of customer, to that of
2 others, using the service.
3

4
5 **B. Google Allegedly Engages in Unfair Business**
6 **Practices.**
7

8
9 The Court can find liability, here, for Unfair
10 business practices, if the Defendant has acted in any
11 one of the following three prong capacities:
12 unlawfully, fraudulently, and unfairly. *State Farm Fire*
13 *Cas Co. v. Superior Court*, (1996) 45 CA 4th 1093, 1104.
14 "Unfair" is defined, as any action, which, either,
15 contravenes anti-trust policy, or threatens
16 competition. *Id.*
17
18
19

20
21 Moreover, the fraudulently prong can be found to be
22 satisfied, with any presentation that is misleading by
23 the Defendant. *Boslina v. Home Loan Center Inc.*,
24 (2011) 198 CA 4th 230, 129. Unlawful business
25 practices can be found by the Court, simply if the
26
27
28

1 Defendant has committed an act, which threatens the
2 laws of competition. *Cal Tech Communications, Inc. v.*
3 *Los Angeles Cellular Tel Co.*, (1999) 20 C 4th 163, 187.
4

5
6 The Defendant, here, violated this Unfair business
7 tort, as clearly the prong of misleading, and
8 fraudulent representations in marketing, is satisfied,
9 here, through the Defendant's exhibited alleged gross
10 under inflation of website visits, as a result of its
11 online marketing services. *Boslina v. See Attached*
12 *Exhibit*. Specifically, the alleged misrepresentation
13 and inflation of website clicks on the Defendant Google
14 Analytics tool. This behavior, here, has been shown to
15 be systematic, and continuous, as the Plaintiff alleges
16 that all purchased campaigns, demonstrated, this
17 fraudulent reporting, and the presence of material
18 discrepancies between, Facebook Ads Manager, and Google
19 Analytics.
20
21
22
23
24
25
26
27
28

1 Further, the Court, here, can also see that the
2 Defendant has engaged in behavior, with the intention
3 of "excluding competition," through allegedly
4 exaggerating, here, the effectiveness of its online
5 marketing products, and fraudulently manipulating, the
6 customer acquisition data. *State Farm v. Boslina v.*
7
8 *See Attached Exhibits.* Additionally, the Defendant
9 also has also allegedly committed unfair practices, and
10 excluded competition, here, through its random and
11 selective denial of Plaintiff's access, to its Google
12 Ad words product. *Id. See Attached Exhibit 2.*
13
14
15
16

17 Such behavior, here, has restricted Plaintiff's
18 ability to operate its business, and allowed its
19 competitors to gain an advantage through utilizing the
20 Defendant's online advertising tool, which is allegedly
21 the only one of its kind in the industry. Thus, here,
22 the Defendant allegedly has caused actual damages in
23 lost sales, and access to private capital markets,
24
25
26
27
28

1 through its alleged odious unfair business practices,
2 and monopolistic behavior.
3
4
5

6 **III. Intentional Interference with Contractual**
7 **Relations**
8
9

10 The Court should probably find that the defendant
11 committed the tort of Intentional Interference with
12 Contractual Relations, *Leasing Corp. v. Geltman*, 406
13 Mass. 811, 812, 551 N.E.2d 20 n. 6 (Mass. 1990), the
14 Court held that a party is liable for intentional
15 interference with contractual relations, if a valid
16 contract existed, the defendant had knowledge of the
17 contract, the defendant acted intentionally and
18 improperly, and that plaintiff was injured by the
19 defendant's actions. *See also Nautica Manufacturing Co.*
20 *v.*
21
22
23
24
25
26
27
28

1 In this case, there was an intentional interference
2 with contractual relations, here, because the Defendant
3 had constructive notice of contractual relations, here,
4 as Google's marketing and metrics products are
5 frequently used for, and specifically designed for,
6 business use, and connecting with potential customers.
7 The Defendant, here, offers a Google Ad words product
8 primarily for business owners' use, and for the sole
9 purpose of creating contractual relations with
10 potential e-commerce customers. *Id.* The Contractual
11 relations, here, were witnessed by the Defendant, here,
12 as the website clicks were recorded, on Google servers.
13
14
15
16
17
18

19 Finally, the Plaintiff, here, allegedly was injured
20 by the Defendant, as a direct result of the Defendant's
21 fraudulent behavior, and alleged misrepresentation of
22 its delivery of marketing services. *Id.* The
23 Plaintiff, here, had its businesses damaged, as a
24 direct result of being sent improper customer
25 acquisition data, overpaying for online marketing
26
27
28

1 services, and making improper business decisions based
2 on the alleged improper data.

3
4
5 Moreover, such allegedly fraudulent data also
6 materially affected, here, the Plaintiff's ability, to
7 access private capital markets, and potentially public
8 capital markets, to obtain capital for ongoing business
9 purposes. The Plaintiff, here, was improperly denied
10 access to customers for potential sales of products,
11 and was potentially denied private funding, based on
12 alleged improperly reported customer acquisition data.
13 Hence, the Court, here, can determine that a taking of
14 the Plaintiff's business has occurred, as a direct
15 result of the Defendant's alleged improper pricing,
16 fraudulent conveyances, and non-delivery of undeniably
17 critical online marketing services in its alleged
18 violation of intentional interference with contractual
19 negotiations.
20
21
22
23
24

25 26 27 IV. Negligence 28

1
2 The Court should probably, here, find that the
3 Defendant committed the tort of Negligence. In *U.S. v.*
4 *Carroll Towing Co.*, 159 F.2d 169, 174 (2nd Circuit
5 1947), the Court ruled that a Defendant, here, is
6 liable for Negligence if the risk outweighed the burden
7 of prevention of the obstruction. Moreover, under the
8 tort of negligence, a Defendant has a reasonable care
9 of duty to the whole world, and, here, probably had a
10 heightened care of duty, as the Plaintiff became an
11 invitee, once a paying customer relationship was
12 established. *Coates v. Mulji Inn, Inc.*, 342 S.E.2d 488
13 (Ga. App. 1986).
14
15
16
17
18
19

20 The Defendant, here, has a duty to check and see if
21 its online marketing products are working properly, and
22 as advertised to the consumer. In fact, the Plaintiff,
23 here, could not imagine a more important business
24 investment for an Internet search and online
25 advertising company, which relies primarily on online
26
27
28

1 marketing for revenue, than a checks and balance system
2 for the accurate delivery, and reporting of its
3 products. The Defendant, here, was also negligent in
4 selectively denying Plaintiff access, to its Google Ad
5 words product. There is no justifiable explanation
6 offered by the Defendant, here, and such random
7 servicing of similarly situated customers, is the very
8 definition of negligent behavior.
9
10
11

12
13 Moreover, the Defendant, here, possesses tens of
14 billions of dollars, thus the burden of investing in
15 systems, and procedures, to ensure that customers are
16 not receiving fraudulent service, and unfairly
17 discriminated against in product access, does not
18 outweigh the risk of obstruction, here, which is global
19 damage to its business customers and the global
20 economy, as a whole.
21
22
23
24

25
26 Specifically, here, the Defendant was negligent, in
27 its operation of Google Analytics, and in fraudulently
28

1 conveying grossly under inflated website click rates,
2 in conjunction, with its amorphous, and non-transparent
3 pricing schemes for its online advertising products.
4

5 *See Attached Exhibits.*
6
7

8 Further, the Defendant, here, should have known
9 that its alleged monopolistic behavior, and alleged
10 fraudulent conveyances, as a result of negligent
11 operation, would materially affect small business
12 owners. *Id. Carrol Towing Co. v.* Thus, the Defendant
13 has caused damages, here, in lost business, and access
14 to venture capital funding through its alleged
15 negligent conduct.
16
17
18
19

20 **V. Vertical and Horizontal Price Fixing**

21
22

23 The Defendant should probably be found to have
24 violated the tort of Vertical price fixing. A
25 Defendant should be found liable for any action that
26 adversely affects the marketplace, and competition,
27
28

1 without legal justification. *Marin Country Bd. Of*
2 *Realtors Inc. v. Palsson*, (1976) 16 C 3d 920, 930, 931.
3 See also *Custom Kitchen v. Owens-Illinois Inc.*, (1987)
4 191 CA 3d 1341. Moreover, a Defendant can also be
5 found liable for the tort for "tying" products, under
6 *California Business and Practices Code Section 16727*.
7 This is where a Defendant forces a customer, to
8 purchase a separate product concurrently, with another
9 product which is marginally distinct. *Id.*

10
11
12
13
14 Specifically, in *Freeman v. San Diego Ass'n of*
15 *Realtors*, (1999) 77 CA 4th 171, 188, 189, the Court
16 found liability for the Defendant interfering, with the
17 distributor's ability to set, raise, or maintain prices
18 through the manipulation of capacity. Also See *Kowlong*
19 *v. Dow Jones & Co. Inc.* (1982) 137 CA 3d 709. Finally,
20 the Court has upheld this law, on many occasions, and
21 most recently in an analogous case, upheld a government
22 fine of close to \$300MM for a tech company illegally
23 inflating the price of DRAM products, to their
24
25
26
27
28

1 customers. See *State of California v. Infineone Tech.*,
2 2010 WL 3411378 (N.D. Cal.)
3
4

5 The Defendant, here, should be found liable of the
6 tort of price fixing because like in *Freeman v.*, and
7 *State of California v.*, the alleged monopoly Defendant
8 constrained trade, and affected the market through the
9 following specific acts, here,
10
11

12
13 the Defendant: published alleged under inflated and
14 fraudulent metric results, repressively denied
15 Plaintiff access to its online marketing product,
16 allegedly offers clandestine and grossly disparate
17 pricing system through its online marketing
18 product, only displays pricing after the client has
19 been billed, requires customers to sign up for a
20 multitude of products in order to just access one,
21 uses a bid platform that enters customers into
22 multiple different and distinct platforms, and
23
24
25
26
27
28

1 forces customers to market, one, and only one
2 product through its online marketing product.
3

4
5 More specifically, here, the Defendant constrains
6 capacity, like in *Freeman v.*, as a Plaintiff is unable
7 to determine how much it will cost to obtain a click
8 for its business website upon purchase of Defendant's
9 marketing products, and the Plaintiff is constrained
10 from marketing multiple products, within a single
11 campaign. The Defendant, here, operates a clandestine
12 bid system, which generates inequitable prices per
13 Website click across customers, and its Ads creation
14 tool, here, does not tell customers how much they pay,
15 until after they have entered the clandestine market
16 and been charged. Moreover, the Defendant's alleged
17 vertical pricing scheme, here, only applies, to
18 similarly situated customers, who are actually allowed
19 access to the product for a respective business.
20
21
22
23
24
25
26
27
28

1 Moreover, the Defendant should also be found to
2 have violated the tort of Price Fixing, here, as the
3 Defendant engages, in product tying. *California*
4
5 *Business and Practices Code Section 16727*. The
6 Defendant, here, required the Plaintiff's staff to sign
7 up, and create a profile on Google, in order to gain
8
9 access to its online marketing products, and Analytics
10 tool, along with its email, and other offerings. The
11
12 Court should note that it is true that no such tying
13 occurs, in relation to its search engine product
14 offering.
15

16
17 The Plaintiff, here, was not able, to purchase the
18
19 online marketing products, without this all-
20 encompassing sign up. This is product tying per se, as
21
22 the Plaintiff staff, here, was forced to sign up for
23 Google, in order to attempt to access the Defendant's
24 Ad words, and Google Analytics products.
25
26
27
28

1 Lastly, the Defendant, here, as mentioned above,
2 also provides online marketing products only, in a bid
3 format, where a customer bids for clicks in a non-
4 transparent virtual online market. This bidding
5 pricing structure, here, also constitutes product
6 tying, as the Plaintiff, here, allegedly is required to
7 make bids, on a variety of different, and distinct,
8 online platforms, in order to obtain potential website
9 clicks, thus bids on multiple types of online marketing
10 platforms are unduly being forced, on all of the
11 Defendant's customers, as a result of the Defendant's
12 predatory pricing schemes.
13
14
15
16
17
18

19 Moreover, such a bidding format, here, as also
20 mentioned above, does not provide for the Defendant to
21 commit to the cost per click of an online ad, rather
22 the customer is told through the Ad manager what price
23 per click is charged to the customer, based on
24 Facebook's magical bid system. *See Attached Exhibits.*
25
26
27
28

1 If the Google Analytics, here, demonstrates
2 fraudulent conveyances, regarding clicks, then the
3 Court should also consider, here, the Defendant's non
4 transparent, and inequitable pricing model, to aid in
5 the fraud. This is per se Vertical price fixing. The
6 Defendant is constricting trade, and altering market
7 forces by charging individual customers different
8 respective prices for online marketing services, on a
9 per click basis. Perhaps, some content warrants a
10 higher marketing click price, but the pricing should
11 still be uniform for customers, either, across intended
12 industries, or, target audiences.

13 **VI. Conclusion.**

14 In Conclusion, the Court, here, should find that
15 the Defendant allegedly engages, in monopolistic
16 behavior, allegedly engages in price fixing, allegedly
17 fraudulently reports data, and allegedly unfairly
18 denies customers access to products. Further, the

1 Court, here, should send the Defendant a message that
2 the public, here, will be protected from such alleged
3 tortious conduct. Further, the extreme financial girth
4 of the Defendant, will not shield the Defendant from
5 its liability for these alleged torts, as such torts,
6 materially relate to the very operation of markets, and
7 our global economy, as a whole.
8
9

10
11
12 **Request for Jury Trial**
13

14 The Plaintiff, here, requests the Court to grant a Jury
15 trial, pursuant to *Rule 38 FRCP*.
16
17

18
19 **Request for Relief**
20

21 Plaintiff seeks U.S. \$340 million, in compensatory
22 damages for the damage to, and taking of its business
23 property, and the damage to all exiting, and potential
24 relations with Plaintiff's customers.
25
26
27
28

1 Also, in *Waits v. Frito Lay, Inc.* 978 F.2d 1093
2 (9th Cir. 1992), the Court held that punitive damages
3 are available where it is proven by clear and
4 convincing evidence that the Defendant is guilty of
5 either, fraud, or malice. The Defendant, here, clearly
6 engages, in fraud through the alleged fraudulent
7 conveyance of the website clicks generated by its
8 Google analytics metrics products, gross predatory
9 product pricing, and selective of denial of products to
10 customers, similarly situated, thus punitive relief
11 should be duly granted, in the amount of U.S. \$250
12 million, thus a total of U.S. \$590 million, should be
13 awarded in compensatory and punitive damages for these
14 alleged business torts.
15
16
17
18
19

20 Respectfully submitted,
21

22
23 /s/ Benjamin Woodhouse
24 Benjamin Woodhouse esq.
25 Havensight Capital LLC
26 #5 Company St.
27 Christiansted, VI 00820
28 805 478 1958
 California Bar #261361